

## ISSUE AND FACTS

Is an unrestricted contribution to a cemetery company exempt from federal income tax under section 501(c)(13) of the Internal Revenue Code but not described in section 170(c)(2)(B), made by an organization that is a private foundation under section 509(a), a taxable expenditure within the meaning of section 4945(d)(5) or a qualifying distribution within the meaning of section 4942(g)?

## LAW AND ANALYSIS

Section 4942(g) of the Code provides in part that the term 'qualifying distribution' means any amount paid to accomplish one or more of the purposes described in section 170(c)(2)(B).

Section 4945(d)(5) of the Code provides that the term 'taxable expenditure' means any amount paid or incurred by a private foundation for any purpose other than one specified in section 170(c)(2)(B).

Section 170(c)(2)(B) of the Code describes an organization that is organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals.

Section 501(c)(13) of the Code provides for the exemption from federal income tax of cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit.

Section 170(c)(5) of the Code provides that the term 'charitable contribution' includes a contribution or gift or for the use of a cemetery owned and operated exclusively for the benefit of its members, if such company is not operated for profit.

Although a cemetery company exempt under section 501(c)(13) of the Code is an organization to which contributions are deductible under section 170(c)(5), it is not an organization organized and operated exclusively for the purposes described in section 170(c)(2)(B).

## HOLDING

Since the private foundation's contribution to the cemetery company is not an amount paid to accomplish one or more of the purposes described in section 170(c)(2)(B) of the Code, the contribution is a taxable expenditure within the meaning of section 4945(d)(5) and is not a qualifying distribution within the meaning of section 4942(g).

Compare section 53.4947-1(b)(2)(vii) of the Foundation Excise Tax Regulations which provides an exception to this rule for certain trusts described in section 4947(a)(1) of the Code that are devoted to section 170(c)(5) purposes together with section 170(c)(2)(B) purposes. Payments under the terms of the governing instrument of such a trust to an organization described in section 170(c)(5) are not considered a violation of section 4945(d)(5) and are considered qualifying distributions under section 4942.